

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JAMES P. KARTELL
Petitioner

Civil Action No. 04-10917-WGY

v.

BRIAN BURGWINKLE
Respondent

**MOTION TO DISMISS THOMAS F. REILLY, ATTORNEY GENERAL OF THE
COMMONWEALTH OF MASSACHUSETTS, FROM THE SUIT**

In his petition for habeas corpus relief, the petitioner mistakenly named Thomas F. Reilly, the Attorney General of the Commonwealth of Massachusetts, as a respondent. Only the superintendent of the institution where the petitioner is incarcerated, here Brian Burgwinkle, may be properly named as a respondent. *See* 28 U.S.C. § 2254 Rule 2(a). Consequently, Attorney General Reilly, through undersigned counsel, respectfully requests that this Court remove him as a party to the above-captioned matter.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Daniel I. Smulow
Daniel I. Smulow, BBO # 641668
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2949

Dated: June 14, 2004

Certificate of Compliance with Local Rule 7.1(A)(2)

I, Daniel I. Smulow, hereby certify that I spoke with Attorney Michael J. Traft by telephone on June 14, 2004, and he takes no position on this motion.

/s/ Daniel I. Smulow

Certificate of Service

I, Daniel I. Smulow, hereby certify that on June 14, 2004, I served a true copy of this document by first class mail to: Michael J. Traft, Esq., Carney & Bassil, 20 Park Plaza, Suite 1405, Boston, MA 02116.

/s/ Daniel I. Smulow